

guidance on the
**health and safety at work
asbestos-licensing**
(Jersey) regulations 2008



This guidance provides advice for those who have to comply with the Health and Safety at Work (Asbestos-Licensing) (Jersey) Regulations 2008. These Regulations prohibit work with asbestos insulation, asbestos insulation board or asbestos coating (except textured decorative coatings), other than certain short duration work, unless it is carried out by an employer or self-employed person who holds a licence granted by the Minister for Social Security, or has received written approval from an Inspector to work on a licence issued under a similar regulatory scheme in the UK or Northern Ireland.

Background to the Regulations

The Regulations came into force on 5 February 2008, and replaced the Asbestos (Licensing) (Jersey) Regulations 1997. Based upon current knowledge, they are intended to ensure a proportionate approach to the protection of workers from the risks associated with exposure to asbestos fibre.

Practical guidance on work with asbestos for persons who have duties under Part 2 of the Health and Safety at Work (Jersey) Law 1989, is contained within the 'Management of Exposure to Asbestos in Workplace Buildings and Structures: Approved Code of Practice'.

An Approved Code of Practice has a special legal status. Although alternative methods to those set out in the Code of Practice can be followed, the Code is admissible in the courts as evidence of best practice. If you comply with the Code you will be doing enough to comply with the Law; if you do not, you must be able to demonstrate the Law has been complied with in some other way, or the court will find you at fault.

Operation of the Regulations

Regulation 2 of the Health and Safety at Work (Asbestos - Licensing) (Jersey) Regulations 2008, restricts work on materials, subject to the Regulations, to persons who hold a licence, apart from certain short duration work, air monitoring or analytical work.

Licences are issued with specific conditions attached. Failure to comply with the conditions of the licence may result in the licence being revoked (under Regulation 3) and is an offence which may result in legal proceedings being taken.

The Regulations require the licensing of those employers and self-employed people who carry out work with the most hazardous asbestos-containing materials but that does not mean that work for which a licence is not required is safe. All work with asbestos is potentially hazardous and should be carried out in compliance with the Health and Safety at Work (Jersey) Law 1989, and the Management of Exposure to Asbestos in Workplace Buildings and Structures: Approved Code of Practice.

Commentary on the Regulations

Regulation

Interpretation

Regulation 1

In these Regulations, unless the context otherwise requires –

"asbestos" means any of the following fibrous silicates –

- (a) asbestos actinolite, CAS No 77536-66-4;
- (b) asbestos grunerite (amosite), CAS No 12172-73-5;
- (c) asbestos anthophyllite, CAS No 77536-67-5;
- (d) chrysotile, CAS No 12001-29-5;
- (e) crocidolite, CAS NO 12001-28-4;
- (f) asbestos tremolite, CAS No 77536-68-6,

and references to "CAS" followed by a numerical sequence are references to CAS Registry Numbers assigned to chemicals by the Chemical Abstracts Service, a division of the American Chemical Society;

"asbestos cement" means a material –

- (a) that is predominantly a mixture of cement and asbestos; and
- (b) that, in a dry state, absorbs less than 30% water by weight;

"asbestos coating" means a surface coating that –

- (a) contains asbestos for fire protection purposes or for both heat and sound insulation purposes; but
- (b) is not merely a coating (such as paint or ceiling plaster) that contains asbestos that is applied to provide a decorative or textured finish where any thermal or acoustic property of the coating is incidental to the main purpose of the coating;

"asbestos insulation" means a material that contains asbestos and is used for thermal, acoustic or other insulation purposes (including fire protection) but does not mean –

- (a) asbestos cement;
- (b) asbestos insulation board; or
- (c) an article of bitumen, plastic, resin or rubber that contains asbestos, where any thermal or acoustic properties of the article are incidental to its main purpose;

"asbestos insulation board" means a flat sheet, tile or building board that consists of a mixture of asbestos and other material but does not mean –

- (a) asbestos cement; or
- (b) an article of bitumen, plastic, resin or rubber that contains asbestos, where any thermal or acoustic properties of the article are incidental to its main purpose;

"Law" means the Health and Safety at Work (Jersey) Law 1989;

"licence" means a valid licence granted under Regulation 3(2)

"work with asbestos insulation, asbestos coating or asbestos insulation board" means work in which asbestos insulation, asbestos coating or asbestos insulation board is removed, repaired or disturbed and includes such work carried out in a supervisory or ancillary capacity.

Guidance

"Asbestos" is the general term for the fibrous silicates listed in the definition in Regulation 1. Any mixture which contains one or more of these fibrous silicates is within the definition.

"Asbestos cement" is a mixture of asbestos (predominantly chrysotile) and cement which is moulded and compressed to produce a range of asbestos products such as roofing sheets, wall boards, gutters, drainpipes and flues.

As the asbestos fibres are mostly firmly bound into the cement and not readily made airborne, work with asbestos cement does not pose the same risks as work with asbestos insulation, asbestos insulation board and sprayed asbestos coatings. Work with asbestos cement, therefore, does not require a licence.

Where there is any doubt about whether an asbestos-containing material is an asbestos cement product after standard analysis by a UKAS accredited laboratory, a water absorption test will need to be carried out to determine whether work on the material falls within the licensing regime.

"Asbestos coating" describes the various mixtures containing asbestos which were widely used as surface coatings for fire protection purposes or as both heat and sound insulation. Most of these coatings were applied by spray, but some were applied by hand.

"Asbestos coating" does **not** include thin textured decorative coatings such as paints and ceiling plasters used to produce visual effects. These coatings are designed to be decorative and any thermal or acoustic properties are incidental to their purpose. Work with these thin textured decorative coatings does not require a licence.

The definition of "asbestos coating" also does not apply to the base material to which a coating has been applied, even if that base material contains asbestos. The base material may, however, fall within the definition of asbestos insulation or asbestos insulation board.

"Asbestos insulation" describes the many asbestos-containing products used for thermal, acoustic and other insulation purposes and for fire protection, which were not applied as a coating. This includes preformed sections of pipe insulation, asbestos lagging and asbestos infill (asbestos used to fill the spaces between voids, applied between floors and packed around cables where they pass between floors).

The definition specifically excludes articles made of rubber, plastic, resin or bitumen but which also contain asbestos, such as vinyl floor tiles, electric cables, and roofing felts, where any thermal or acoustic properties are incidental to the main purpose. Other materials where the asbestos fibres are linked firmly in a matrix but have no insulation purposes such as paper linings, textiles, gaskets, washers and rope are also not subject to the Regulations.

"Asbestos insulation board" is a lightly compressed board made from asbestos fibre and hydrated Portland cement, or calcium silicate with other filler materials. Asbestos insulation board is covered by this definition irrespective of its intended purpose; i.e., whether or not the board is used for insulation purposes.

The definition of 'work with asbestos insulation, asbestos insulation board and asbestos coating' includes the most hazardous activities: removal, repair and disturbance. The Licensing Regulations apply whenever this work is being carried out. Work which is purely in a supervisory or ancillary capacity is specifically included in the definition.

Guidance

'Supervisory work' means work involving any direct supervisory control over those removing, repairing or disturbing asbestos. It would not normally include inspection or quality control work, or a main contractor on a construction or demolition site if the work with asbestos is being done by a licensed subcontractor.

'Ancillary work' means work associated with the main work of repair, removal or disturbance of asbestos. Examples of this would include putting up and taking down scaffolding to provide access for licensable work where it is foreseeable that the scaffolding activity is likely to disturb the asbestos; and the maintenance of plant and equipment which could be contaminated with asbestos.

Work with asbestos insulation, asbestos coating or asbestos insulation board

Regulation 2

Regulation

- (1) Except as provided by paragraphs (2) and (3), an employer or self-employed person must not undertake work with asbestos insulation, asbestos coating or asbestos insulation board, unless he or she –
 - (a) is the holder of a licence that authorizes its holder to undertake the work; and
 - (b) undertakes the work in compliance with the terms and conditions of the licence.
- (2) Paragraph (1) does not apply if the work does not require more than –
 - (a) one hour's work by any one person in any period of 7 consecutive days; and
 - (b) 2 hours' work by all persons undertaking the work.
- (3) Paragraph (1) does not apply if the work consists solely of –
 - (a) air monitoring or collecting samples for identification or sample analysis; or
 - (b) encapsulating or sealing a material, in a good condition, that contains asbestos

Guidance

This Regulation prohibits employers or self-employed people from carrying out work with asbestos insulation, asbestos insulation board or asbestos coatings, unless they hold a licence issued under the Regulations and comply with any terms or conditions of that licence. There are two exceptions to this requirement.

Regulation 2(2) permits work of short duration to be carried out without a licence. The work can only be considered as short duration if:

- (a) any one person carries out the work with these materials for less than one hour in a seven day period; or
- (b) the total time spent by all workers on the work does not exceed a total of two hours.

When calculating the time the work takes, anything associated with the work which is liable to disturb the asbestos, including set-up and clearance of any potentially affected area afterwards, must be included.

Guidance

Unlicensed employers cannot string out lengthy jobs by using a number of different employees, nor can they permit one employee to work with asbestos insulation, asbestos coatings or asbestos insulation board for a large number of short spells in any week. This exception is designed to allow for minor maintenance and repair work involving asbestos-containing materials that may be required occasionally in any premises.

It is important to recognise that even if a licence is not required for the work, the work must be undertaken in a safe manner. All work with asbestos, no matter how short its duration, has the potential to give rise to respirable asbestos fibre. Any such work should be carefully planned and undertaken in accordance with the relevant legislation and published guidance, including the Management of Exposure to Asbestos in Workplace Buildings and Structures: Approved Code of Practice.

The second exception, set out in Regulation 2 (3), allows persons carrying out air monitoring, the collection and analysis of samples to ascertain whether a specific material contains asbestos, and encapsulation or sealing of asbestos-containing materials which are in good condition, to carry out such work without the need to hold a licence.

Any work, referred to in the paragraph above, should only be carried out by competent people who have received sufficient training to understand the risks involved and the precautions that have to be taken during their work to prevent the release of asbestos fibre. All such work should be carried out in accordance with relevant legislation and published guidance, including the Management of Exposure to Asbestos in Workplace Buildings and Structures: Approved Code of Practice.

Licences

Regulation 3

Regulation

- (1) A person may apply to the Minister for a licence.
- (2) The Minister –
 - (a) shall grant the licence if he or she considers it appropriate to do so; and
 - (b) may grant the licence subject to such terms and conditions as the Minister considers appropriate.
- (3) A licence is valid for the period (if any) specified in it.
- (4) The Minister may amend a term or a condition of a licence by written notice to its holder.
- (5) The Minister may revoke a licence by written notice to its holder if the holder –
 - (a) contravenes a condition of the licence;
 - (b) is convicted of an offence under Article 21 of the Law; or
 - (c) is served with a prohibition notice under Article 14 of the Law.
- (6) The holder of a licence must return it to the Minister –
 - (a) if required for amendment; or
 - (b) if it is revoked.

Guidance

All licences issued for work with asbestos insulation, asbestos coating or asbestos insulation board are granted by the Minister for Social Security under the terms of this Regulation.

The application form for a licence and any subsequent renewal is available on the Inspectorate website www.gov.je/hsi or can be obtained on request from the Health and Safety Inspectorate.

Completed application forms should be sent to:

Health and Safety Inspectorate
Maritime House
La Route du Port Elizabeth
St. Helier
JE2 3NW

The licence will specify the terms and conditions laid down by the Minister for Social Security. The conditions imposed depend upon an assessment of the applicant by the Health and Safety Inspectorate. This includes a check on the information given on the application form as well as an examination of the applicant's current performance record if they already hold a licence.

The Minister for Social Security may consider it inappropriate to issue licences to those employers and individuals who:

- (a) have been convicted of offences under Article 21 of the Health and Safety at Work (Jersey) Law 1989;
- (b) have been served with a Prohibition Notice under Article 14 of the Health and Safety at Work (Jersey) Law 1989;
- (c) have failed to demonstrate an adequate level of competence during previous inspections of their work;
- (d) appear to have inadequate knowledge, organisation or arrangements to carry out the precautions necessary to safeguard the health of their employees.

The Minister for Social Security may require a licence to be returned in order to amend the conditions imposed if there are concerns about the licence holder's ability to work in accordance with the appropriate standards or if a specific project carries particular risks. If a licence holder ceases to trade, or stops carrying out work with asbestos insulation, asbestos coatings or asbestos insulation board, the licence should be returned to the Minister for Social Security via the Health and Safety Inspectorate.

All licences are issued for a limited period of time so that the Inspectorate can review performance at regular intervals. If applicants have little previous experience of work with asbestos, or the Inspectorate has not inspected their work, the terms of the licence may be more restricted than in the case of a known experienced contractor.

In practice, most licences contain five standard conditions, which are as follows:

- (a) a requirement for a copy of the licence to be available at all sites where licensable work is being carried out. A copy should also be made available on request to any person to whom the licensee submits a tender or quotation for work with licensable products.
- (b) the licensee shall notify the Health and Safety Inspectorate in writing at least 14 days before work is commenced. In certain circumstances the Inspectorate may allow a shorter period, for example, in an emergency where there is a serious risk to the health or safety of any person.

Guidance

- (c) the notice of work referred to above shall include a suitable and sufficient plan of work (method statement), which identifies how the risks associated with the work are being controlled.
- (d) all work with asbestos must be supervised by a senior employee who has detailed knowledge of the legal requirements relating to the work.
- (e) all asbestos waste must be disposed of in a manner approved by the Department for Growth, Housing and Environment.

Other conditions may be imposed by the Minister for Social Security, if considered appropriate. These could be associated with, for example, the special nature of the work of some licensees or if there are concerns about the performance of a particular licensee.

The conditions of licensing will be used by the Health and Safety Inspectorate to monitor closely the work of certain licence holders without placing unnecessary limitations or conditions on the work of competent employers and self-employed people.

The ultimate power the Minister for Social Security has under this Regulation is to revoke a licence. This is a very serious step which could affect the livelihood of the licensee and his employees.

Exemptions

Regulation 4

Regulation

- (1) The Minister may issue a written certificate that exempts from these Regulations –
 - (a) a person or a class of people; or
 - (c) a product or a class of products that contain asbestos.
- (2) An exemption is valid for the period (if any) specified in the certificate.
- (3) An exemption may be granted subject to terms and conditions.
- (4) The Minister may revoke an exemption by another written certificate.
- (5) The Minister must not grant an exemption unless he or she is satisfied, having regard to the relevant circumstances, that the health and safety of people who are likely to be affected by the exemption will not be prejudiced as a consequence of the exemption.

Guidance

This Regulation gives the Minister for Social Security powers to grant exemptions in certain circumstances from any or all of the requirements of the Regulations. Applications for an exemption should be made to the Minister, who will need to be satisfied that the health and safety of people who are likely to be affected by the exemption are in no way prejudiced as a consequence.

Regulation

Licensing by United Kingdom authorities

Regulation 5

- (1) This Regulation applies where –
- (a) a person who has a current licence granted under the Control of Asbestos Regulations 2006 or the Asbestos (Licensing) (Amendment) Regulations (Northern Ireland) 2000 of the United Kingdom, as from time to time amended or re-enacted, that authorizes the person to carry out work with asbestos insulation, asbestos coating or asbestos insulation board, is proposing to undertake that type of work in Jersey; and
 - (b) the licence has been inspected and approved by an inspector, and the inspector has given the licensee written confirmation of the approval.
- (2) The licence has effect in Jersey as if it were a licence granted by the Minister under these Regulations on the date on which it was granted in the United Kingdom.

Guidance

Contractors, who specialise in working with asbestos materials and who have been granted a licence under a similar United Kingdom regulatory scheme occasionally carry out work in the Island. Such contractors can carry out work in Jersey under these Regulations if they have received written approval from the Health and Safety Inspectorate.

The application form for obtaining approval to work on a licence issued by a UK Regulatory Authority is available on the Inspectorate website www.gov.je/hsi or can be obtained on request from the Health and Safety Inspectorate.

The completed application form should be submitted with a copy of the licence held and details of the Company profile. Checks of the information given on the application form will be carried out and contact made with the issuing authority of the licence to review the applicant's performance record (if available).

An Inspector may consider it inappropriate to issue approval to those employers and individuals:

- a) who have been convicted of offences under health and safety legislation; or
- b) who have been served with a Prohibition Notice within the previous 5 years; or
- c) where a pattern of poor performance is identified during a review of the performance record.

All approvals for an extension of a UK licence to cover work in Jersey are only valid for the period of time covered by the UK licence in place at the time of the application. Any desire to work on a new or renewed UK licence will require a further application to the Inspectorate.

The approval is also subject to the terms and conditions set out in the UK Licence. It should be noted that a suitable and sufficient Plan of Work must accompany every notification of work at least 14 working days before the proposed start date. In certain circumstances the Inspectorate may allow a shorter period, for example, in an emergency where there is a serious risk to the health or safety of any person, but only following agreement of the Inspectorate and submission of a suitable and sufficient Plan of Work.

Guidance

Approval to work on a UK licence may be subject to additional conditions if considered appropriate. This may be associated with, for example, a particularly difficult job or if there are concerns about the licence holder's ability to work in accordance with the appropriate standards. In the most serious cases, an Inspector can revoke the approval to work in Jersey.

Completed application forms and accompanying information should be sent to:

Health and Safety Inspectorate

Maritime House

La Route du Port Elizabeth

St. Helier

Jersey

JE2 3NW

This approval is issued without prejudice to any other condition which is imposed or required by other States Departments, for example, the Population Office which administers the Regulation of Undertakings Law, and the Planning and Environment Department which administers the Waste Management (Jersey) Law 2005.

Revocation and savings

Regulation 6

- (1) The Asbestos (Licensing) (Jersey) Regulations 1997 are revoked.
- (2) A licence, certificate or approval granted or given under the Regulations mentioned in paragraph (1) and in force immediately before their revocation continues in force as if it were a licence, certificate or approval granted or given under these Regulations.

Citation and commencement

Regulation 7

- (1) These Regulations may be cited as the Health and Safety at Work (Asbestos – Licensing) (Jersey) Regulations 2008.
- (2) They come into force 7 days after they are made.

Regulation

Regulation



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